REMARKS

INTRODUCTION:

In accordance with the foregoing, claim 18 has been amended. No new matter is being presented, and approval and entry are respectfully requested.

Claims 1-21 are pending and under consideration.

ALLOWABLE SUBJECT MATTER:

In the Office Action, at page 9, the Examiner indicated that claim 13 would be allowable if rewritten in independent form. Applicant holds rewriting of this claim in abeyance until the Examiner has had the opportunity to review the arguments presented herein.

REJECTION UNDER 35 U.S.C. §§102 and 103:

In the Office Action, at page 2, the Examiner rejected claims 1-7, 9-12, and 15-21 under 35 U.S.C. §102(b) as being unpatentable by Boudnik (US 2003/0115252 – hereinafter Boudnik). The reasons for the rejection are set forth in the Office Action and therefore not repeated. Applicant traverses this rejection and respectfully requests reconsideration.

In the Office Action, at page 8, the Examiner rejected claims 8 and 14 under 35 U.S.C. §103(a) as being unpatentable over Boudnik in view of Fraenkel (US 2003/0065986 – hereinafter Fraenkel). The reasons for the rejection are set forth in the Office Action and therefore not repeated. Applicant traverses this rejection and respectfully requests reconsideration.

The MPEP states: "[t]o anticipate a claim, the reference must teach every element of the claim." (MPEP 2131).

The MPEP then quotes: "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). (Quoted in MPEP 2131).

The MPEP further quotes "[t]he elements must be arranged as required by the claim, but this is not an *ipsissimis verbis* test, i.e., identity of terminology is not required." *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990). (Quoted in MPEP 2131).

Independent claim 1 recites: "...a first test session servlet running on the agent, receiving a test description in a predetermined format from a caller, the test description including at least

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one predefined subtest, dynamic data, and predefined test parameters, threading a first test session that invokes the agent to run the at least one subtest, receiving subtest results from the first test session, and sending the subtest results from the at least one subtest and the dynamic data back to the caller."

Independent claim 5 recites: "...the first test session servlet receiving subtest results from the first test session and sending subtest results from all subtests and the dynamic data back to the caller."

Independent claim 9 recites: "...a first test session servlet running on the agent, receiving a test description in a predetermined format over the network from a caller, the test description including at least one predefined subtest, dynamic data, and predefined test parameters, threading a first test session that invokes the agent to run the at least one subtest to test the network, receiving subtest results from the first test session, and sending the subtest results from the at least one subtest and the dynamic data back to the caller."

Independent claim 20 recites: "...a test session servlet running on the agent, receiving a test from a caller, threading a test session that invokes the agent to run the test, receiving test results from the test session, and sending the test results back to the caller."

And independent claim 21 recites: "...sending results from the at least one subtest and the dynamic data back to the caller."

Boudnik discloses test systems 114 receiving and executing test execution requests (e.g., 116a-c). Additionally, Boudnik discloses that an agent process (e.g., 120) can launch subtasks on other agents (e.g. 120a and 120b) and test systems (114a and 114b).

But it is unclear what the Examiner asserts corresponds to the claimed dynamic data.

Boudnik discloses hash tables (e.g., initial parameters tables 604), but the communication is only one way. That is, the communication goes to the test agent process, but not back to the system controller 108.

In contrast, in the independent claims, dynamic data is sent back to the caller.

As one of ordinary skill in the art would appreciate, dynamic data is data that is not available at a beginning of a test session, but is generated during a session.

For example, a first test session (A) is started by a caller, and has a cell phone probe. During operation, test session A is assigned a SIM. In other words, one would not know the

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phone number for the test session until after the test session starts. This phone number is an example of dynamic data for test session A.

Next, test session A posts a request for the caller to run test session B on another test system, and the phone number of test session A is sent as dynamic data to test session B. Test Session B has a WIFI interface, and once test session B logs on, a confirmation number is generated to correspond to the phone number for test session A, and this confirmation number is sent back to test session A as dynamic data. And all dynamic data is sent back to the caller.

Accordingly, Applicant respectfully submits that Boudnik fails to disclose every element of the claims, arranged as required by the claims. Accordingly, Applicant respectfully submits that the Examiner has not provided sufficient evidence to maintain a prima facie anticipation rejection of the independent claims.

Further, regarding claim 16, which recites: "...wherein execution of the at least one subtest is not scheduled through a centralized agent scheduler," Applicant respectfully submits that Boudnik neither discloses nor suggests such a feature, since every request in Boudnik goes through the JINI Look up service 104 to find a suitable test system. (See Boudnik, e.g., at paragraphs 38 and 62).

Applicant respectfully submits that independent claims 1, 5, 9, 20, and 21 patentably distinguish over the cited art, and should be allowable for at least the above-mentioned reasons. Further, Applicant respectfully submits that claims 2-4, 6-8, 10-12, and 14-19, which variously depend from independent claims 1, 5, or 9, should be allowable for at least the same reasons as claims 1, 5, and 9, as well as for the additional features recited therein.

CONCLUSION:

In accordance with the foregoing, Applicants respectfully submit that all outstanding objections and rejections have been overcome and/or rendered moot, and further, that all pending claims patentably distinguish over the cited art. Thus, there being no further outstanding objections or rejections, the application is submitted as being in condition for allowance which action is earnestly solicited.

Respectfully submitted,

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